

# Committee on Resources

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## Introduction and Background Information

Mr. Chairman and members of the House Committee on Resources, my name is Joel Rosenstein. I am here on behalf of Coloradans for Water Conservation and Development (CWCD). I represent the Denver Metro Chamber of Commerce on CWCD's board of directors. I was recently elected vice president of CWCD.

The CWCD is a recently formed non-profit corporation that promotes responsible conservation and the development of water resources in the State of Colorado. The CWCD represents a broad coalition of business and agricultural interests, many of which are statewide organizations. Our charter members include the Denver Metro Chamber of Commerce, Colorado Concern, the Colorado Farm Bureau, National Association of Industrial and Office Properties, Colorado Apartment Association, the Colorado Association of Home Builders, as well as number of individuals supportive of our primary objectives.

The severity of the recent drought on Colorado business and agriculture and the need for a unified voice for water development among business and agriculture interests prompted these organizations to form a coalition that, in a very short time, is shaping policy concerning conservation and the development of the state's water resources. In fact, we are beginning to work with public and private entities to support the development of additional water projects.

In addition to my involvement with the CWCD, I am a real estate attorney with the Denver law firm of Fisher, Sweetbaum & Levin. I practice real estate, general corporate and some special district law. Since 2002, I have chaired the Denver Metro Chamber of Commerce's Water Task Force. This year, our task force issued a white paper entitled "Water: What it Means to Business." In researching and drafting the white paper, I was involved in extensive interviews with stakeholders representing an array of business and agricultural interests from around the state. In publishing the white paper, the Denver Metro Chamber of Commerce sought to inform and educate its membership and other interested parties about the critical role of water in our state's economy.

In researching and preparing this white paper, our committee found that notwithstanding water's centrality to a healthy, vibrant economy in Colorado, the business community has typically been involved only on the periphery of Colorado water policy discussions and debates. The historic drought of 2002 (and for some areas of the state, 2003) has caused many Colorado business leaders and businesses to focus on the management and development of Colorado's precious water resources.

## 2002 Drought Impacts

The drought impacted nearly every industry in every region in Colorado. Sixty-three of the 64 counties in Colorado received a federal drought disaster designation and, for the first time since its creation in 1981, Colorado's Drought Mitigation and Response Plan was fully activated. The Conservation and Drought Planning Division of the Colorado Department of Natural Resources estimated the economic loss to agriculture, tourism and recreation – three of Colorado's largest industries – at \$1.1 billion. Agricultural producers, especially dry land crop and livestock producers, suffered damages totaling more than \$450 million. The green industries (landscaping and nursery industries) estimate that the 2002 drought resulted in a loss of 15,000 jobs and \$75 million in sales.

The severe drought caused many municipal water providers in the metropolitan Denver area to impose severe water use restrictions. These restrictions caused lawns, gardens, fields and parks to brown. This, in turn, forced many school-aged children to find other locations to practice and engage in organized sports. For those unable to find a suitable alternative, they had to do without. Wildlife habitat and riparian areas also suffered tremendously. For residents of smaller towns, such as Rocky Ford, Beulah, Victor, Cripple Creek and Penrose, the water shortage forced entire towns to have drinking water delivered, by truck, from other locations.

## Water development and conservation: key elements in securing Colorado's future

If Colorado's economy is to remain strong and vibrant, we must take immediate action to maximize our current water resources and develop water resources on both sides of the Continental Divide. Water conservation measures must be tailored to preserve and sustain return flows for downstream users and to facilitate the recharging of underground aquifers. While conservation is a necessary component of sound water management, conservation, alone, will not meet the growing demands of our state. We must do more to store excess water during times of peak run-off as permitted by our interstate compacts. The storage of such water will benefit instream flows and recreational uses as much as it does municipal, industrial and agricultural users.

Efforts are now underway at the state and local levels to identify projects that are feasible and locally supported. One of the most expedient ways to increase Colorado's capacity is to repair, rehabilitate and restore our existing facilities. According to the Colorado Department of Natural Resources, we are unable to use more than 100,000 acre feet of reservoir storage. Such facilities require capital repairs before they can safely fill to full capacity. Just like conservation, the rehabilitation of existing facilities is an important part of managing our state's water resources. And, like conservation, rehabilitation of existing facilities, alone, is not enough to meet our future needs.

Currently, the Colorado Water Conservation Board (CWCB) is conducting the Statewide Water Supply Initiative (SWSI). The CWCB will issue a report in December 2004. SWSI will identify new local and regional water storage projects with attendant local and regional support. In addition, SWSI will also identify conservation projects and initiatives and existing facilities in need of repair and/or expansion. We look forward to working with the CWCB, local water conservation and conservancy districts and municipalities in moving these projects forward – projects that will meet our future water needs and temper the severity of future droughts.

#### **Federal permitting: A major obstacle to water development**

Each proposed water project will face a unique set of challenges before its completion. All water projects, however, face a very daunting challenge in satisfying the multi-faceted requirements of the various state and federal agencies having jurisdiction. In our view, the greatest obstacle for any water storage project is securing the necessary federal permits. An applicant's efforts to secure such permits require significant time and resources. It is important to note that new water storage projects and the repair, rehabilitation and expansion of existing water storage facilities are subject to the onerous permitting process. Even continued operation of existing facilities can become entangled in permitting disputes when existing permits must be renewed.

There is no question that environmental impacts must be assessed when a project is being considered. Environmental Impact Statements (EIS) required under National Environmental Policy Act (NEPA) are, in theory, an excellent opportunity for project proponents and opponents to assess the positive and negative impacts of a proposed project. It is our understanding that the NEPA process was intended as a tool for regulators, stake holders and lawmakers to identify the environmental issues that may arise from a water project. It is our further understanding that the environmental analyses to be conducted pursuant to NEPA should result in a balancing act between the environment and the diverse needs of our citizenry. This EIS process, however, has evolved in a way that, too often, does not meet the needs of our citizenry, especially those relating to water development. The process, too often, halts water development projects that are both feasible and have sufficient financial backing.

When Secretary of the Interior Gale Norton, then acting as Attorney General of the State of Colorado, testified before the full House Resources Committee during a 1998 Oversight Hearing on NEPA, she drew a grim picture of the burdensome nature of EIS process. Of the final EISs filed in 1996, Norton stated, the longest had 1638 pages of text, while the average was 572 pages, including 204 pages of NEPA analysis. In preparation of an EIS, a project proponent must expend significant time and resources. Such are spent with no reasonable assurance that the proposed water project will ultimately prevail or prevail on a timetable that meets the growing demands of its proposed users. For instance, the Parker Water and Sanitation District has spent approximately 18 years and millions of dollars trying to permit its off-channel reservoir, Reuter-Hess. Permitting and red tape can mire down even the most environmentally benign water projects. Rancher John Miller from Montezuma County spent \$20,000 out of his own pocket on permitting to clean out an irrigation ditch that predated the San Juan National Forest.

We respectfully urge Congress to take immediate action to streamline the federal permitting process. We look to recent actions by Congress where the permitting process has been significantly simplified, if not

altogether eliminated, for actions deemed to be critical for the health and safety of our citizens.

### **Models for future permitting reforms**

Congress had considered permitting reforms before. The most recent energy bill, the Chairman's CALFED bill, and the Healthy Forests Restoration Act of 2003 addressed ways to streamline overly burdensome federal permitting requirements. Improved coordination among federal agencies, stronger state roles in the process and limits on appeals are constructive proposals that will help streamline the process. In addition, limiting the number of alternatives an agency must consider, and expanding categorical exclusions from NEPA to include repermitting, repairing or enlarging existing facilities may merit consideration.

The Healthy Forests Restoration Act of 2003 (Act) provides one model of federal permitting reform. The Act limits the number of alternatives that must be considered when assessing environmental impacts. Perhaps, just as important as examining the alternatives of moving forward with a particular project or initiative, the Act requires that the federal government consider the impact of not moving forward. With respect to public land management, the cost of not moving forward with forest management may be the increased risk of catastrophic wildfires that ravage lands and habitat and endanger human lives and homes. In the case of water development, the cost of not moving forward is no less catastrophic: loss of critical riparian and wildlife areas, impacts to drinking water supplies, soil erosion and dust storms (which Colorado experienced in the 2002 drought), the strain on existing water capacity, and the loss of the quality of life that makes Colorado a very desirable place to live, work and raise a family.

The Act also set forth a tiered approach to deal with federal permitting. In the Act, there are specific federal activities, such as those involving federal agency involvement in developing a community wildfire protection plan, that are deemed not to constitute a federal agency action under NEPA (42 U.S.C. 4321 et seq.).

We acknowledge that it may not always be appropriate to exempt completely a federal agency action from NEPA. In these instances, it may be helpful to limit the scope and duration of the NEPA process. The Act provides that certain federal activities, such as those involving wildland-urban interface, do not require the Secretary of Interior "to study, develop or describe more than the proposed agency action and one action alternative in the environmental impact statement prepared pursuant to section 102(2) of the National Environmental Policy Act of 1969."

We believe that similar actions must be taken with respect to federal laws such as NEPA that relate to the permitting of water projects in Colorado. Earlier in my testimony, I referred to the ongoing efforts of SWSI to identify existing storage facilities in need of repair and rehabilitation and new water projects. We propose that with respect to those projects in need of repair and rehabilitation as identified by SWSI, such should not be categorically subjected to a NEPA or similar review process. And, in connection with new water projects identified by SWSI, they should be subject to a less burdensome federal permitting process whereby the proponent must only submit one alternative in preparing the EIS.

Thank you, Mr. Chairman, members of the Committee, CWCD would be happy to work with you on these, or other ideas, to help ensure future generations have adequate water supplies.

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